



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

BJG
Docket No: 4354-00
12 October 2000

CAPT [REDACTED] USMCR
[REDACTED]
[REDACTED]

Dear Captain [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of title 10 of the United States Code, section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 4 October 2000. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies. In addition, the Board considered the advisory opinion furnished by Headquarters Marine Corps, dated 20 September 2000, a copy of which is attached. They also considered your rebuttal letter dated 28 September 2000.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice. In this connection, the Board substantially concurred with the comments contained in the advisory opinion. They were unable to find that you were told you would go before the promotion board next convened after your removal from the temporary disability retired list. Even if you did not knowingly consent to a captain date of rank of 1 May 1997 rather than 1 January 1994, they found that the later date of rank was properly assigned with a view toward maximizing your chances to be selected for promotion to major. In view of the above, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official

records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director

Enclosure

4354-06



DEPARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
MANPOWER AND RESERVE AFFAIRS DEPARTMENT
HARRY LEE HALL, 17 LEJEUNE ROAD
QUANTICO, VIRGINIA 22134-5104

IN REPLY REFER TO:

1412/2

MMPR

10 SEP 2000

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Subj: BCNR APPLICATION IN THE CASE OF CAPTAIN [REDACTED]
[REDACTED] USMC

Ref: (a) MMR Route Sheet of 18 Sep 00
(b) Title 10, U. S. Code

1. Reference (a) requested an advisory opinion in the case of Captain [REDACTED]. Captain [REDACTED] is requesting a correction to his date of rank and lineal standing due to his reassignment to the Active-Duty List.

2. The following facts are germane:

a. Captain [REDACTED] was reaccessed from the Temporary Disabled Retired List (TDRL) to the Active-Duty List on 990511.

b. Upon his assignment to the TDRL, he was a first lieutenant with a date of rank of 910114.

c. He was reaccessed as a captain per §1211(b)(1) of reference (b). He was eligible to be assigned a date of rank of 940101, where he would have been had he not been assigned to the TDRL. This date of rank would have made him eligible, as an In Zone officer, for the FY01 USMC Major Promotion Selection Board, which convened 991026.

d. Per §1211(f) of reference (b), he was not given this date of rank. Had he been assigned the date of rank of 940101, he would have only had the potential for four-months of observed fitness reports as a captain before being considered for promotion to major. Instead, he was offered the date of rank of 970501, which makes him eligible, as a Below Zone officer, for the FY02 USMC Major Promotion Selection Board, which convenes 001030. This date of rank provides Captain [REDACTED] an opportunity to be competitive for future advancement and promotion per §1211(f) of reference (b).

Subj: BCNR APPLICATION IN THE CASE OF CAPTAIN [REDACTED]
[REDACTED] USMC

e. Captain [REDACTED] gave his consent to the lesser date of rank by signing the NAVMC 763, Appointment Acceptance and Record dated 990511.

f. There is no stipulation in reference (b) §1211 placing officers returning from the TDRL at the top of the lineal precedence list for that officer's grade. Reference (b) §1211(e) permits placing the officer on the lineal list with the seniority and years of service authorized by the Secretary of the Navy. The NAVMC 763 states the seniority authorized by the Secretary of the Navy.

g. This Marine will not be competitive for advancement without observed fitness report time. It would be an injustice to adjust his date of rank.

3. Based on the above analysis, the Promotion Branch recommends against granting Captain [REDACTED] a backdate of rank to 940101 and lineal control number of 00243500.

4. The point of contact in this matter is Captain [REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
Head, Officer Promotion Section